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CURRENT TOPICS

The Late Judge Samuel

THE law has lost an outstanding character in His Honour Judge WALTER HOWEL SAMUEL, who died on 5th April at Swansea at the age of seventy-two. Like many other eminent contemporaries, he went to an elementary school, but like few others, he began work at eleven in a colliery. A colliery accident when he was twenty-five obliged him to take up less physically active work and he commenced studying for the Bar some years later. He was called by the Middle Temple and joined the South Wales Circuit, where he soon became busy. From 1930 to 1933 he was Recorder of Merthyr Tydfil. In 1931 he took silk and in 1933 he accepted a judgeship on county court circuit No. 28 (Mid-Wales and parts of Shropshire). In 1923 and 1924 and 1929 to 1931 he was Labour Member of Parliament for Swansea West. He was a judge of great ability and charm and he will be greatly missed.

Professional Pensions

WHILE authorities of various kinds discuss whether judges and members of Parliament should have more pay, it is refreshing to discover that somebody has been doing something about the fate of the ordinary professional man. His practice, if any, is not usually saleable, if at all, for enough to make provision for his old age. A news item in *The Times* of 11th April, 1953, states that recently some agents for life assurance companies have been anticipating the recommendations of the Millard Tucker Committee on the treatment of pension schemes for tax purposes, by approaching "self-employed persons" and advising them of the kind of pension schemes which would be offered if the same sort of tax privileges were accorded to the self-employed as have hitherto been enjoyed by employees. Such intelligent anticipation cannot be criticised, and indeed must be applauded, as it is now nearly three years since the committee was appointed, and the bread and butter problems of the work-a-day professional man are hardly likely to "hit the headlines" in the same way as the loftier troubles of judges and M.P.'s. It has now become known that the drafting of the Millard Tucker report is in its closing stages and that the Committee are engaged in a final review of it. When their work is completed we shall know whether or not there is ground to hope for better things, or merely to be thankful for small mercies.

Rent De-control

THE Association of British Chambers of Commerce has addressed a letter to the Central Housing Advisory Committee in which it recommends that, after an appointed date, the Rent Restrictions Acts should cease to apply to unfurnished residential premises of a rateable value exceeding £40 which are let for the first time after that date; and that, where the vacant possession of property already let is obtained after that appointed date, that property should also be freed from the Rent Restrictions Acts. The recommendation makes it clear, however, that such property would still be subject to control as to the level of rent charged. This would mean that the new tenancies would be on a contract basis as far

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as tenure was concerned, and owners could achieve vacant possession on expiration of the lease. The rents of unfurnished lettings if not controlled under the Rent Restrictions Acts would become subject either to the control of the rent tribunals set up under the Furnished Houses (Rent Control) Act, 1946, or as suggested in the Government's statement of policy on leasehold property in England and Wales (Cmd. 8713) of the county court, assisted as necessary by technical assessors. The Association suggests this amendment of the law as "useful interim action . . . to ease the position." The letter makes the point that the present shortage of houses has tended to be aggravated by under-occupation of many existing ones. It continues: "The operation of the Rent Restrictions Acts discourages many owners of a certain class of house from making available for tenancy either houses or parts of houses which could otherwise be occupied. . . . Moreover, this has the effect of diminishing the market value of the property."

Licensing Justices and Inn Names

STRANGE as are the ways in which the law's dictates have invaded our personal lives in these days of planning, the strangest of all, if indeed it is legal, seems to be the power of the licensing justices to object to the name of a public house. If it had not been reported in all the most respectable newspapers, lawyers would have found it hard to believe that licensing justices either had the legal power, or the heart, to object to the application of the ancient and honoured name of "Pig and Whistle" to a public house. Mr. M. B. PARRY-JONES, for Messrs. H. & G. Symonds, the brewers who were asking the justices of High Wycombe, Bucks, to grant a licence, was told by the justices on 9th April that "Pig and Whistle" was unsuitable as a name and "Micklefield Arms" would be more appropriate. The brewers gave way and the terms of the licence were accepted. It seems a pity that no applicant for a licence is ambitious of acquiring fame by standing up for English traditional names for public houses. There should be a fair chance of success on appeal against the imposition of a name or the refusal to approve a traditional name as a condition of the grant of a licence, for such a condition must be "in the interests of the public." What is contrary to the interests of the public in calling a public house "Pig and Whistle" or "Dog and Duck" or "Fox and Hounds"? It has been pointed out that the pig and whistle sign is to be found in many churches, including Winchester Cathedral, where a sow is shown sitting on her haunches playing a whistle. When it was put there, there were no licensing justices, and in any case the cathedral was outside their jurisdiction.

Judge's Criticism of Solicitors

THE Council of The Law Society have addressed a communication to Mr. Justice STABLE, according to the April issue of the *Law Society's Gazette*, with reference to a criticism to which the learned judge subjected solicitors in October, 1952, at Oxford Assizes. The solicitors had instructed counsel to appear for a man who pleaded not guilty to a charge of unlawful wounding. On the jury finding a verdict of guilty the learned judge asked what effect, if any, a sentence of imprisonment would have on the pension which the defendant was receiving from the Admiralty. On failing to obtain the desired information, his lordship said that the solicitors of the defendant should have found out the information before the case came into court and added: "If solicitors are being paid out of public funds to defend, why do they not take the trouble to find these things out and instruct counsel properly? What do they think they are being paid for? They just sit there and do nothing. They ought to know." The Council stated in their communication to Mr. Justice Stable that his criticism of the solicitors was unfair. They wrote that it is not part of the general duty of solicitors representing an accused who pleads not guilty to ascertain in every case whether their client is in receipt of a pension and, if so, and the defence is unsuccessful, whether that pension would be affected by any particular punishment which the court might decide to impose.

New Zealand Divorce Law

A MEMBER of the New Zealand Bar, Mr. WILFRID ERNE LEICESTER, has sent a memorandum to the Royal Commission on Divorce, having been invited to do so by the New Zealand Government. The views he expresses in the memorandum are not necessarily those of the New Zealand Government. He states that the ground for divorce introduced in 1920 and most frequently resorted to in New Zealand is mutual separation, either oral or by deed or agreement, for not less than three years. The safeguard has been provided that, if the respondent opposes the making of the decree, and it is proved to the satisfaction of the court that the separation was due to the wrongful act or conduct of the petitioner, the court must dismiss the petition. There is the further ground of separation by court order for three years. Nearly 1,000 petitions annually are presented on the ground of separation. In his opinion there is no evidence that social harm has arisen from that situation. On the contrary, it has had the effect of removing substantially, if not entirely, the stigma from divorce in New Zealand. During the years from 1936 to 1944 the average duration of the marriage (where a decree absolute was made in a separation suit) was fifteen years, so that if the marriages were tried and found wanting at least they were tried for a reasonable period before being brought to an end. Mr. Leicester's opinion is that there is no proof that the liberality of New Zealand ideas on divorce has brought about anything but good there.

Congestion in the Metropolitan Magistrates' Courts

A statement by the HOME SECRETARY in the Commons (p. 283, *post*) shows that quick action has been taken to deal with the problem of the congestion of business in the Metropolitan Magistrates' Courts, which has been the subject of a memorandum approved by the General Council of the Bar and sent to the Home Office. The Annual Statement for 1952 summarises its principal recommendations as follows: (1) Matrimonial cases should be assigned either to special metropolitan magistrates, who would deal exclusively with such cases, or to lay justices sitting at special "domestic" courts. (2) Other work of a civil character and especially cases of guardianship and adoption of children should in general be transferred to the jurisdiction of the county court. (3) More criminal work of a less serious nature, e.g., motoring offences, drunkenness, recovery of arrears of income tax and local rates, should be dealt with by lay justices in the metropolitan area. (4) Additional metropolitan magistrates should be appointed. (5) Extra accommodation for courts should be found by using council chambers or committee rooms which are to be found in the town halls of all the metropolitan boroughs. (6) Greater flexibility should be applied to the venue of hearing and in the transfer of cases. Two metropolitan magistrates should sit permanently at one of the central courts and there deal solely with long indictable cases.

EVIDENCE ACT, 1938—STATEMENT BY "PERSON INTERESTED"

THE Evidence Act, 1938, s. 1, deals with the admissibility of documentary evidence as to facts in issue, and subs. (3) thereof provides that "Nothing in this section shall render admissible in evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish." There is no comprehensive category of persons "interested" within s. 1 (3). One must always bear in mind the fact that if a statement is admitted under s. 1, it is a statement to which there can be no cross-examination. It is imperative therefore that if such a statement is admitted it should have been made by an "independent" person in the ordinary sense of the word. An "independent" person in that sense means a person who has no temptation to depart from the truth on one side or the other, a person not swayed by personal interest, but completely detached and impartial. In every case the facts must be ascertained as to the person whose statement is sought to be put in evidence and as to the character and subject matter of the "proceeding" and the relation of the matter to the subject-matter of the proceeding, in order to decide the question of admissibility.

Thus, in *Bain* v. *Moss Hutchinson Line, Ltd.* [1949] 1 K.B. 51, on the night of 18th August, 1945, there was a fire in the saloon of the steamship *Esnoh*. Alexander Bain, the purser, was trapped in his cabin next to the saloon and died in consequence of the fire. The plaintiff, his widow, brought this action for negligence against the defendants, the owners of the *Esnoh*. She alleged that the defendants were negligent (i) in exposing the deceased to undue risk, (ii) in not providing proper fire-fighting appliances, and (iii) in failing to provide a safe and proper system of work in that the night watchman was not properly instructed in his duties, that there was no proper system of fire alarms and that there had been no fire drill over a long period. The defendants denied that they were negligent in any respect. The defendants applied for an order that statements made by the master and the second and third officers of the *Esnoh* in the form of signed proofs should be admitted in evidence. Those witnesses were beyond the seas and it was not reasonably practicable to call them. The statements would tend to establish facts which were in issue, presumably about the fire buckets and fire appliances on board the *Esnoh*. The three statements were made after the issue of the writ in the action and while proceedings were pending. Birkett, J., ruled that the master and second officer and third officer of the ship, although they had no financial or pecuniary interest in the matter, were persons who were personally interested in the result of the action because of its nature and because of the allegations made, and therefore he would not admit any of the three statements.

It appears to be purely a question of fact as to whether a person is "interested" within the meaning of the statute. Thus, in *The Atlantic and the Baltyk* (1946), 62 T.L.R. 461, in an action arising out of a collision between these two vessels, it was sought by counsel for the *Atlantic* to read certain statements made by the master, two engineers and the look-out man of the *Atlantic*. These statements were made before a public notary in New York about a month after the collision. The makers of the statements were not available to give evidence on oath because they were dispersed in various parts of the world. On objection being made to the admissibility of this evidence, Bucknill, L.J., ruled that the statements made by the engineers and the look-out man were admissible under the Evidence Act, 1938, as they were not "persons interested," but that at the time when the master made his statement he was a "person interested" in that, as master of the ship and in charge of her navigation before the collision, he might be personally liable for damages to the plaintiff ship caused by his negligence, if established, and that his statement therefore was not admissible.

The servant of a limited company *may* be a "person interested" within the meaning of s. 1 (3) of the Act of 1938. In *Plomien Fuel Economiser Co., Ltd.* v. *National Marketing Co.* [1941] Ch. 248 the plaintiffs carried on the business of supplying a device known as the Plomien fuel economiser, the object of which was to reduce the amount of fuel used in any boiler to which it was fitted. The defendants carried on the business of supplying a device with a similar object known as the Fedino fuel economiser. The plaintiffs in this action alleged that the defendants had committed breaches of an agreement made between them in January, 1940, and that they had passed off their fuel economisers as the goods of the plaintiffs. The defendants had issued a document headed "Here are a few of the many well-known firms to whom the National Marketing Company has supplied fuel economisers." While the action was pending the plaintiffs took a signed proof from one Hector Petrie, a tester in their employment, containing, among other things, a statement to the effect that the fuel economisers supplied to some of the persons named in that document were those of the plaintiffs and not of the defendants. His work was to carry out a test to ascertain the result achieved by the plaintiffs' fuel economiser in the case of each particular boiler sold. He died before the hearing of the action at which the plaintiffs tendered his proof of evidence. The defendants objected. Morton, J., ruled that Mr. Petrie was a "person interested," and that the statement in question was inadmissible. As the learned judge said (at pp. 250, 251): "In my view 'a person interested' within the meaning of subs. (3) of s. 1 of the Evidence Act, 1938, must, in the context, mean a person interested in the result of the proceedings 'pending or anticipated.' It seems to me that a useful test, though perhaps not the only one, is: Was it better for Mr. Petrie that the plaintiffs should succeed in the present action or was it a matter of indifference to him? . . . The object of this action is to prevent the plaintiffs' trade being damaged by what they say are unfair acts on the part of the defendants and it seems to me that a man whose employment consists of testing the Plomien fuel economisers must be benefited if the plaintiffs prosper and fuel economisers are sold by them and tested by him in increasing numbers . . ." Later, passing on to deal with the position of a limited company, the learned judge said (at p. 251): "Whether every servant of the company in every set of circumstances is necessarily 'a person interested' is not a matter on which I have formed any concluded judgment. It may be that there are circumstances in which it might be said that a servant of the company was not 'a person interested.' As to that, I express no opinion."

It is clear that a servant of a company or firm is *not necessarily* to be treated in every case as "a person interested." In *In the Estate of Hill, deceased; Braham* v. *Haslewood and Another* [1948] P. 341, during a probate action the question arose whether a certain statement was

admissible under s. 1 of the Evidence Act, 1938. The defendant, Mr. Haslewood, was one of the executors of the will propounded by the defendants in their defence and counter-claim. At a time when it was anticipated that there might be proceedings in relation to the validity of one or other or both of the two wills which were later to become the subject of the action, Mr. Symonds, a clerk employed in the firm of Messrs. Haslewood, Hare & Co., prepared a signed statement of the relevant evidence which he would be able to give. He died before the action came to trial and the defendants tendered his statement in evidence. Objection was taken to its admissibility on the ground that Mr. Symonds was a " person interested." When proceedings were anticipated Mr. Symonds had been for many years conveyancing clerk in the firm of Messrs. Haslewood, Hare & Co., and he was closely connected with the present matter. He had taken a direct professional interest in the matters relating to the will of 1941 ; he had been concerned with the unfortunate family quarrels that had taken place ; he had been concerned with the power of attorney, and he obviously prepared the statement with a view to his appearance as a witness in proceedings as to the effectiveness of one or other of the testamentary documents. At the time this statement came into existence, Messrs. Haslewood, Hare & Co. were interested in the sense that everything proper should be done to secure the victory of their clients in any proceedings that were then anticipated. But Wallington, J., pointed out that neither the stability nor reputation nor business of either Messrs. Haslewood, Hare & Co. or of Mr. Symonds would be prejudiced if the proceedings did not terminate in favour of their clients, the defendants, and the learned judge expressed the view that the proper professional interest which Messrs. Haslewood, Hare & Co. and Mr. Symonds took in the result of the proceedings was not of the character intended to be included in the provisions of s. 1 (3) and, therefore, Mr. Symonds was not " a person interested " and accordingly his statement was admissible in evidence. Wallington, J., also said that it is not right to say that in every case there must be a probability or possibility of financial advantage or disadvantage relating to a person whose statement is tendered, in order to make the statement inadmissible. That is clearly not the sole test.

While there may properly be some argument as to whether a servant of a limited company or firm is or is not a " person interested " within the statute, there appears little doubt that in the case of an action brought by a limited company every shareholder and director is a " person interested " in the result of the proceedings (see *Plomien Fuel Economiser Co., Ltd.* v. *National Marketing Co.* [1941] Ch. 248, *per* Morton, J., at p. 251).

A mere family or sentimental interest is not of the character envisaged by the statutory provisions which we are considering. Thus, in *Holton* v. *Holton* [1946] 2 All E.R. 534, during the hearing of a petition for divorce, at the end of the evidence of the husband petitioner he said that a statement which was put to him was in the handwriting of, and signed by, his mother, having been written by her in June, 1944. She had since died. The petitioner added that the document came into existence at the suggestion of his solicitors. Barnard, J., ruled that the petitioner's mother was not a " person interested " within the meaning of s. 1 (3) and that the document was admissible.

A person whose reputation is involved in the result of an action may be a person " interested." In *Evon and Evon* v. *Noble* [1949] 1 K.B. 222 the second plaintiff, a girl then aged four, was injured when playing with a rubber tube from a carboy of acid in a shed at the rear of a chemist's shop where the defendant carried on business. She, by her father and next friend, and her father in his personal capacity, brought an action against the defendant chemist for negligence. The writ was issued on 19th September, 1946. A nursemaid made a written statement dated 3rd June, 1947, regarding relevant events within her knowledge which had occurred on that day, but she could not now be traced although all reasonable efforts had been made to find her. The plaintiffs applied at the trial of the action that the nursemaid's statement should be admitted. Birkett, J., while mentioning that the nursemaid was a servant in the employment of the plaintiffs, refused to admit the statement, resting his decision on the ground that the nursemaid was a " person interested " because she had been left in charge of the children and in that sense her reputation was involved in the result of the action.

In *Barkway* v. *South Wales Transport Co., Ltd.* [1949] 1 K.B. 54 the tyre of an omnibus burst and an accident followed in which a number of passengers were killed or injured. *J*, a tyre-tester employed by the defendant omnibus company, gave evidence for them in an action for negligence brought against them by an injured passenger. Later the widow of a passenger killed in the accident brought a second action for negligence against the company in respect of her husband's death, but meanwhile *J* had died. References were made in the second action to what *J* had said in the first action, but there was no formal application then to use his evidence. When the second action came to the Court of Appeal it was sought to use the transcript of the evidence in the first action as evidence in the appeal. In giving the judgment of the court on that issue, Asquith, L.J., considered a number of points under the Evidence Act, 1938, and said that *J*, the tyre-tester, was clearly a " person interested " within the meaning of s. 1 (3) of that statute. His reputation as a tyre-tester was involved and, apart from that, he was interested as an employee in his employers winning the case.

The question whether proceedings are " anticipated " at the time when a statement is made has been considered in connection with road accidents. In *Robinson* v. *Stern* [1939] 2 K.B. 260 (C.A.) the defendant was driving a motor car and collided with the infant plaintiff on the highway. Immediately after the accident the defendant went to a police station and, after a caution by the police constable that what she said might be used as evidence, made a statement tending to show that the accident was not due to her fault but to the fault of the infant plaintiff. In a subsequent action by the plaintiff for damages for personal injuries this statement was tendered as evidence on behalf of the defendant. The statement was admitted by the learned judge at the trial, but, on appeal, the Court of Appeal (Scott, Clauson and Goddard, L.JJ.) held that the defendant after the caution administered to her by the police constable must have contemplated the possibility of proceedings being taken against her and therefore the statement was not evidence under the Evidence Act, 1938, and that there must be a new trial. Goddard, L.J. (at p. 269), expressed the opinion that the word " anticipated " in relation to proceedings in s. 1 (3) of the Act of 1938 does not necessarily mean an immediate proceeding or a threatened proceeding.

It may be observed that *Robinson* v. *Stern, supra*, did not decide that a statement made to a constable who is inquiring into the facts of a road accident can never be admitted. Moreover, the warning in the above case was the warning given to a suspected person under the judges' rules, and that is different in nature from the warning given under s. 21 of the Road Traffic Act, 1930. Thus, in *Hollington* v.

F. Hewthorn and Company, Ltd., and Another [1943] K.B. 587 (C.A.), in an action arising out of a collision between two motor cars on the highway in which the plaintiff alleged negligence on the part of the defendant driver, the plaintiff sought to give evidence of a statement made to a police constable by the driver of the plaintiff's car (who had died after action brought) after the collision and after the constable had warned him, in accordance with s. 21 (*a*) of the Road Traffic Act, 1930, that the question of prosecuting him for reckless, dangerous, or careless driving would be considered. It appears from the report of the case (at p. 603), that the driver of the plaintiff's car in his statement practically admitted that the accident was his fault, but later said that it was the fault of the defendant driver. The Court of Appeal held that no inference is necessarily to be drawn from the giving of the warning under s. 21 of the Road Traffic Act, 1930, but that in the present case the terms of the statement justified the inference that the person making it anticipated civil proceedings at least, and it was therefore inadmissible. While dealing with road accidents—and indeed the same would apply to other kinds of accidents—it may be mentioned that independent witnesses, who make statements to the police or to the solicitors acting for a party, are not "persons interested" within the statute (see *Bullock* v. *Borrett and Another* (1939), 55 T.L.R. 408, and *Friend* v. *Wallman* [1946] K.B. 493).

M.

A Conveyancer's Diary

THE MATRIMONIAL HOME AND THE DESERTED WIFE—III

THE last of the recent cases on this subject is *Bendall* v. *McWhirter* [1952] 2 Q.B. 466. In this case *H*, who was the estate owner of the matrimonial home, deserted *W*, who remained in occupation. *H* was subsequently adjudicated bankrupt, and his trustee in bankruptcy claimed possession of the house against *W*. The county court judge held that *W's* occupation was that of a licensee and that her licence had determined when the house vested in the plaintiff under the Bankruptcy Act, 1914, and he accordingly made an order for possession on the footing that *W* was a trespasser. This decision was reversed on appeal.

The Court of Appeal consisted of Somervell, Denning and Romer, L.JJ., and two judgments were delivered. That of Romer, L.J., with which Somervell, L.J., concurred, may be summarised as follows: *H* could not eject *W* from the matrimonial home, because the status of matrimony prevented it; *H's* right to deal with the house was therefore subject to the clog that the house had an occupant whom he could not eject, and his beneficial ownership of the house was to that extent restricted; under the general principle that the property of a bankrupt passes to his trustee in the same condition, and subject to all the liabilities, in and subject to which it is in the debtor's hands, *W's* right to possession was binding on the plaintiff. (One consequence of this reasoning is that the house was subject to a heavier burden in the trustee's hands than it had been in the hands of *H*, since *H* could have applied for an order for possession under s. 17 of the Married Women's Property Act, 1882, whereas this remedy was not open to his trustee in bankruptcy; but as Romer, L.J., pointed out, a somewhat similar jurisdiction to that under s. 17 exists, in cases of bankruptcy, under s. 105 of the Bankruptcy Act, 1914, so that for practical purposes the burden which passed to the trustee was not dissimilar from that to which the house had been subject in the hands of *H*.) This judgment clearly does not affect the authority of the decision in *Thompson* v. *Earthy* [1951] 2 K.B. 596, to which Romer, L.J., made only a passing reference.

Denning, L.J., did, however, consider the rights of a wife in relation to the matrimonial home in a more general manner. His is a long judgment, not easy to summarise, but in part it rested on the equation of the position of a wife with that of a person occupying property under a contractual licence, and as regards the latter the learned lord justice said this ([1952] 2 Q.B. at p. 483): "... a contractual licensee, who is in actual occupation of land by virtue of the licence, has an interest which is valid, if not at law at any rate in equity, against the successors in title of the licensor, including therein his trustee in bankruptcy. It is not a legal interest in land, like a tenancy, but a clog or fetter like a lien. It is a personal right, but it is nevertheless binding on successors of a licensor, so long as the conditions of the licence are observed." In this judgment, also, there is no direct comment on the correctness or otherwise of *Thompson* v. *Earthy*, but clearly if the expression "successors of a licensor" is read without restriction so as to include a purchaser for value, there would be a conflict between this view and the earlier decision. But if this expression is so interpreted, that interpretation is *obiter* in the sense of being unnecessary to the decision in *Bendall* v. *McWhirter*.

My conclusion on the cases which have succeeded *Thompson* v. *Earthy* is that they do not affect that decision. There is little doubt that in the view of Denning, L.J., the right of a deserted wife to continue in occupation of the matrimonial home where the legal estate in that home is vested in the husband is a right enforceable in equity, and there are *dicta* in his judgments both in *Errington* v. *Errington* [1952] 1 K.B. 290 and in *Bendall* v. *McWhirter* (particularly in a passage immediately preceding the passage I have cited above, where reference is made to s. 14 of the Law of Property Act, 1925) which indicate that in his view such a right may perhaps be enforceable even against a purchaser for value, if registered as a land charge Class D (iii); but this particular point was not before the court in either of these cases. It was, of course, the only point for decision in *Thompson* v. *Earthy*.

If, then, *Thompson* v. *Earthy* can be regarded as unshaken, the answer to the question with which these articles have been principally concerned—what is the nature of the deserted wife's rights in relation to the matrimonial home when these rights are asserted not against the husband but against a purchaser for value from the husband?—is simple enough; there are no such rights, and if the wife remains in possession after the purchase, she can be ejected as a trespasser.

It may be, of course, that *Thompson* v. *Earthy* will eventually be reversed on appeal. That does not seem to me to be very likely, for apart from the *dicta* of Denning, L.J., to which I have referred, there has been no suggestion in any of the judgments in the cases which have succeeded it that this decision is anything but right. The difficulty in these cases is to see the wood for the trees, but once the principle on which each one has been decided is disentangled, the cases form a composite and reasonably harmonious pattern.

That is really the end of the task which I set myself when I commenced this examination of these cases, but before leaving this topic there are two observations which I would like to make. The first concerns registration. As I have already mentioned, Denning, L.J., has expressed the view that a deserted wife's right to continue in occupation of the matrimonial home may be registrable as a land charge, Class D (iii), that is to say, as an equitable easement; and this suggestion was coupled with a reference to s. 70 (1) (*g*) of the Land Registration Act, 1925. (This last provision was considered in the recent case of *Woolwich Equitable Building Society* v. *Marshall* [1952] Ch. 1, and provides that the rights of every person in actual occupation of the land shall constitute an overriding interest to which any disposition of registered land is subject.) These provisions concern the machinery of modern conveyancing, but they do not, of course, create any rights or liabilities which were not in existence before 1926. In other words, to take advantage of either s. 10 (1) of the Land Charges Act, 1925, or s. 70 (1) (*g*) of the Land Registration Act, 1925, as the case may be, it is first necessary to show that there is a right in existence which can either be registered or subject to which a disposition takes effect (first catch the hare, as Mrs. Beeton is reputed to have said). If *Thompson* v. *Earthy* was correctly decided, there is no right of any kind which a deserted wife can enforce against a purchaser for value from her husband, whether he has notice of her occupation and marital status or not, and the condition bringing either of these provisions into operation is therefore not satisfied. I do not see how the mere existence of this machinery can shed any light on the central question in this line of cases, which is the nature of the right which is being asserted and its extent.

The other matter is one of nomenclature. I have expressed disapproval of the expression "licence" when used to cover the right of the wife in relation to the matrimonial home, because I think it is misleading. In this I find support from Denning, L.J., who, as will be recalled, once said that the wife was not the licensee of the husband in her occupation of the matrimonial home (*Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311, 319). In *Errington* v. *Errington* the learned lord justice recanted, and in *Bendall* v. *McWhirter* both he and Romer, L.J., referred to these rights as those of a licensee. But not without qualification: again and again the special character of the licence is stressed. My objection to this expression is due, primarily, to the considerable doubts which, despite the disinfectant result in this regard of the House of Lords' decision in the *Winter Garden Theatre* case ([1948] A.C. 173), still surround the true nature of the right which is commonly described as a licence to occupy land. Is it not better to describe the wife's rights simply as the right of occupation? In the course of the argument in *Bendall* v. *McWhirter*, Somervell, L.J., threw out the suggestion that these rights are analogous to those of a person claiming the benefit of a restrictive covenant in equity under the principle of *Tulk* v. *Moxhay* (1848), 2 Ph. 774. It has never been thought necessary to describe these last-mentioned rights in a word, and lack of such a description has in no way prevented the courts of equity from either protecting such rights or prescribing the limits within which they operate. There is no reason to suppose that the development (if there is to be any) or definition (if further definition is really needed) of the rights of a wife to occupy the matrimonial home will be in any way retarded by the lack of a single compendious expression to describe them. Indeed, the whole history of equity (and it is common ground that it is only in equity that these rights can, apart from statute, be enforced) indicates the contrary, for equity has always been more concerned with remedies than with the essential nature of the rights which its remedies are intended to enforce. Cannot we leave it at that?

"A B C"

Landlord and Tenant Notebook

ESTOPPEL BY ELECTION

I SUPPOSE that we all get tired, at times, of extending sympathy to disgruntled litigants; but I do not think that anyone would deny the claim to such of the unsuccessful plaintiff in *Rosenfeld* v. *Newman and Others* [1953] 1 W.L.R. 558; *ante*, p. 230.

It is not quite clear how many "others" there were in the two actions brought by the plaintiff in question, but it appears that he had let a house in 1940 to two "families," all members of which had left the premises voluntarily or died by January, 1951. The premises were then occupied by "the defendants," the first two of whom, a married couple, had in 1941 occupied a room let to one of the families, while their daughter-in-law lived with the other family. It may be that the daughter-in-law was the third defendant when, in October, 1951, the plaintiff brought his first action, in which he first claimed possession as against trespassers. He sued in the local county court and, pursuant to Ord. 7, r. 3, of the County Court Rules, 1936, gave in his particulars the annual value of the land, or at all events alleged that that value did not exceed the sum of £100 by the year (County Courts Act, 1934, s. 51 (*b*)). In their defence the defendants pleaded that they had, in effect, become tenants and were protected by the Increase of Rent and Mortgage Interest (Restrictions) Acts; whereupon the plaintiff amended what the report calls his statement of claim by adding an alternative plea, "if, contrary to the plaintiff's contention, the defendants are protected by the Increase of Rent and Mortgage Interest (Restrictions) Acts the plaintiff reasonably requires possession of the said dwelling-house as a residence for himself." Nothing is said, incidentally, about the determination of any contractual tenancy such as must have occurred if the plaintiff were to succeed; but it will be observed that two of his allegations, as the matter stood when the hearing took place, concerned jurisdiction. He alleged that the annual value of the house did not exceed £100; if this were not so, the county court had no jurisdiction to try the issue of trespass. And he alleged that he wanted the house as a residence: this, though it does not of course look like it at first sight, is also an allegation that the court (county or other) has jurisdiction, for what is now s. 3 (1) of the Rent, etc., Restrictions (Amendment) Act, 1933, confers protection by placing a fetter on the court, not on the landlord (*Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.)).

It then transpired that the annual value of the house exceeded £100 and on the defendants' counsel objecting that the judge had no jurisdiction to try the issue of trespass, the plaintiff's counsel, according to the judge's note, "elected to proceed on the alternative ground set out in para. 4 (as amended) of the amended particulars of claim." The judge, having heard the evidence, dismissed the claim with costs for

reasons stated as follows: "Owing to lack of jurisdiction I am compelled to hold that the plaintiff's claim fails—as there is no evidence that the defendants are contractual or statutory tenants."

This terse statement is rather bewildering; but it may be remembered that, having found that the annual value of the house was more than £100, the judge, before he could consider whether he could make an order, had to be satisfied on another point going to jurisdiction—namely that the claim arose out of the Rent, etc., Restrictions Acts, the Increase of Rent, etc., Restrictions Act, 1920, s. 17 (2), so providing. If it did not, jurisdiction would be ousted by the County Courts Act, 1934, s. 51, aforementioned, before the obstacle presented by the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3 (1), came to be negotiated. Hence, the judgment may be read as saying: "The annual value of the premises exceeds £100, so I have no jurisdiction unless the claim arises out of the Rent, etc., Acts, when 'notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court' a county court 'shall have jurisdiction.' If the parties are not landlord and tenant, the claim cannot arise out of those Acts, and there is then no point in considering whether those Acts themselves would give or take away jurisdiction." The reference to "contractual or statutory" tenants may have been made to cover some suggestion that the defendants had a statutory tenancy or tenancies, not by holding over after the determination of some contractual tenancy which had been held by one or all of them, but by reason of their having been sub-tenants retaining possession after the determination of the mesne tenancy or tenancies granted to the two families, so that s. 15 (3) of the Increase of Rent, etc., Restrictions Act, 1920, would apply.

Thereupon the plaintiff instituted proceedings in the High Court alleging that the defendants were trespassers and contending that they were estopped by the county court judgment from denying that they were trespassers. The contention in question was disposed of by Parker, J., by pointing out that though the judgment looked as if there were a finding of trespass, this could not be the case, for the county court judge had no jurisdiction to arrive at such a finding and the allegation of trespass was not the basis of the claim which he did try. So there was no estoppel by *res judicata* to assist the plaintiff.

The defendants then put forward an estoppel argument of their own, which had reference to conduct rather than to judicial decision. The plaintiff, it was contended in effect, could not be heard to say that the defendants were trespassers after electing, in the county court, to abandon that allegation. Among the authorities cited in argument, and the only one cited in the judgment of Parker, J., was *Scarf* v. *Jardine* (1882), 7 App. Cas. 345, in which a vendor of goods first sued a firm consisting of one *B* and one *R*, who became bankrupt before judgment could be obtained, and in whose bankruptcy he proved; and then sued the defendant, who had been *R*'s partner when the plaintiff first dealt with the firm but who had been replaced by *B*, unbeknown to the plaintiff, before the goods sold were ordered. Reversing the decision of the Court of Appeal (which had reversed that of Denman, J.), the House of Lords held that the liability of the defendant as retired partner was a liability by estoppel only and the effect of the authorities, as stated by Lord Blackburn, was "that where a man has an option to choose one or other of two inconsistent things, when once he has made his election it cannot be retracted; it is final and cannot be altered."

It was urged on behalf of the plaintiff in *Rosenfeld* v. *Newman* that there had been no *final* election, the county court judge merely having been asked to decide the tenancy issue without prejudice to the plaintiff's being able to pursue his claim in trespass before a court which had the necessary jurisdiction. But this contention was rejected, Parker, J., holding that such a course could not be taken except by agreement between the parties that the county court judge should proceed on that basis. There had been none, and it was clear that the plaintiff had abandoned his claim in trespass and finally elected to treat the defendants as his tenants. The learned judge agreed that it was difficult to see what had passed through the mind of the county court judge, but there had been a final, if possibly unintended, election which might produce difficulties for the landlord.

The difficulties seem indeed considerable; *prima facie* the plaintiff faces pleas of estoppel whatever he does; if he sues in trespass, estoppel by his election to sue for recovery of possession on determination of a tenancy; if he takes the latter course, estoppel by reason of his having sued in trespass. He may well feel tempted to evict the defendants forcibly before they begin acquiring a title to the freehold by prescription and see whether he cannot plead an estoppel against them on their taking proceedings! But, in my submission, there are two possible criticisms to be made of the judgment.

One is that both actions are actions for the recovery of land; we are not dealing with separate species. A freeholder challenging an occupier's right to possession does so substantially by virtue of his title as freeholder; rules may oblige him to file particulars which "state the ground on which possession is claimed," but, whatever grounds he states, the action is just an action for recovery of land. The "election" in *Rosenfeld* v. *Newman* was made because the Rent, etc., Restrictions Acts happen to confer jurisdiction, which the court would not otherwise have, if it should so happen that the claim "arose out of" those Acts as is provided in s. 17 (2) of the 1920 Act. It is, perhaps, a pity that the attention of the court was not drawn to *J. & F. Stone Lighting and Radio, Ltd.* v. *Levitt* [1947] A.C. 209, in which landlords who had sued for possession on the footing that their tenant was protected were held not to be estopped from subsequently asserting that the Acts did not apply; in the one case the county court judge would derive jurisdiction from the Rent Restriction Acts, in the other from the County Courts Act, 1934.

The other comment which suggests itself is this: Estoppel was described by Wilde, B., in *Cave* v. *Mills* (1862), 7 H. & N. 913, in these terms: "A man shall not be allowed to blow hot and cold—to affirm at one time and deny at another—making a claim on those *whom he has deluded* to their disadvantage, and founding that claim on the very matters of delusion." It might plausibly be urged that the defendants well appreciated that one current was switched off merely because the apparatus concerned would not work in the particular surroundings and that they cannot have been so easily deluded.

R. B.

Mr. R. S. Barrow, solicitor, of Exmouth, left £71,381 (£70,786 net).

Mr. F. B. L. Bowley, solicitor, of Sevenoaks, left £31,352 (£30,271 net).

Alderman D. J. Cartwright, O.B.E., solicitor, of Huddersfield, left £25,438 (£24,196 net).

Mr. A. S. Moore, solicitor, of Derby, left £27,094 (£26,781 net,

PRACTICAL CONVEYANCING—LVII

CONTROLLED PRICE HOUSES

THE statutory provisions for the control of the maximum selling prices of certain houses contained in the Building Materials and Housing Act, 1945, s. 7, were made effective for four years from 20th December, 1945. This period was later extended by the Housing Act, 1949, s. 43, to eight years from that date. The result is that unless further legislation is passed in the meantime this form of control will lapse on 19th December, 1953, and after that date it will not be an offence under the 1945 Act to sell a house at a greater price than that limited by a licence, even if the condition is registered as a local land charge.

It is not possible at the present time to anticipate whether a further extension of the period may be made, and we may have to wait until autumn before it can be stated with certainty whether restrictions in the 1945 Act will cease to have effect in December. It is interesting to note that the provisions of the 1945 Act have been made applicable for an extended period to houses sold by local authorities under the Housing Act, 1952, but this has been done in such a way as not to prejudice the possible lapse of the 1945 Act in the meantime as regards houses erected under the authority of building licences.

The maximum prices fixed six or seven years ago may be materially below present market prices. The result is that a person owning a house subject to a controlled price fixed several years ago may be able to sell his house for a materially higher price early in 1954 if control ceases in the meantime. A subscriber has, however, raised a point which will probably arise quite frequently in the next few months. The owner of the house may wish to sell immediately, but may be reluctant to do so at the controlled price. Our subscriber outlines a suggestion that an agreement should be made for sale at the controlled price subject to a condition that in the event of the Act not being extended after 19th December next a further sum should be paid on 31st December, the sale to be completed on the later date.

The subscriber who has drawn attention to such a scheme expresses the view that it might constitute a violation of the 1945 Act, and with this opinion we agree. The offence under the 1945 Act is committeed by a person who during the relevant period sells or offers to sell a house for a greater price than that fixed, and for this purpose the word "sells" includes "agrees to sell." If control were to cease before completion it would not then be an offence to sell at the greater price, but the problem is whether there is an offence at the present time by the making of an agreement providing for an additional price, even though the addition is contingent. It is difficult to say exactly what view the court would take of this, but it may well be that on the facts envisaged, the court would regard the consideration as excessive, applying, for instance, the provisions of s. 7 (3) or of s. 7 (5) of the 1945 Act, which were designed to prevent avoidance of the Act by associated transactions.

The only safe conclusion at the present time seems to be that there is a danger of an offence being committeed by a transaction of this kind, and so one cannot advise it. On the other hand, no excess will be paid unless control ceases, and if that does happen it will be difficult to suggest that any harm has been done by the attempt to anticipate it.

Attention is drawn to a doubt which may exist after the relevant provision of the 1945 Act has ceased to have effect. The maximum price of a house is fixed by means of a condition in the building licence granted under reg. 56A of the Defence (General) Regulations, 1939. Regulation 56A (8) provides that if any such condition is contravened the person undertaking the operation licensed is guilty of an offence. Thus, at first sight it would appear that in any event for some time after December, 1953, the first sale of a new house by the builder may be restricted as to price either because the licence was granted earlier, or because the practice of inserting conditions in licences continues even after that date.

It is thought that before the 1945 Act came into force the Minister then responsible acted in reliance on the view that conditions as to price were enforceable under the Defence Regulation. On the other hand, it is now often argued that such conditions are *ultra vires* reg. 56A which is concerned with control of building operations and not with control of prices of completed buildings.. Thus, there may be a doubt about the operation of control on first sale of a new house when the time comes, in December, 1953, or later, for the 1945 Act provision to lapse if the relevant Defence Regulation is still in force. An announcement by the responsible Minister of his policy as to the application of control after December, 1953, might well deal with this point.

J. G. S.

HERE AND THERE

LAUGHTER FROM SCOTLAND

CONTRARY to popular English belief Scotland is a rich field for humour. In the course of an Easter Vacation spent over the Border I have picked up three legal stories which are new to me and may be new to you. First there is one about a German pilot shot down very early in the war after that attempt to bomb the Forth Bridge. Oddly enough (but that's the way the English conduct their affairs) he had learned his flying while he was at Oxford as an undergraduate and accordingly, being well informed as to the composition of other volunteer squadrons, he knew that the City of Edinburgh Squadron, to which he had fallen a victim, was largely manned by young advocates. When he was picked up somewhere about the Lammermuirs and brought in for interrogation he was asked whether he was hurt and replied in perfect, if colloquial, English: "Not physically but morally. To be shot down by a bloody barrister flying a bloody biplane is more than I can bloody well bear." Next comes the story of an old gentleman in a railway train who was heard muttering to himself over and over again: "It's a kittle thing the law. It's a kittle thing the law"—"kittle" meaning queer. At last someone asked him what was on his mind and he replied that he'd just been to Perth over some law business: "My wife is suing me for impotence and the nurse is suing me for alimony and I've lost both cases." Finally, there is a story about writers to the signet, the aristocrats of the solicitors' branch of the profession in Scotland. One of their compulsory professional outgoings is a subscription to the widows' fund, due and payable even by bachelors and widowers, as well as married men, no matter how remote their prospects of matrimony. One old gentleman, believing himself to be on his death-bed and feeling that it would be economical to use his rights in the fund to provide for his faithful housekeeper, proposed that she should marry him. She, however, was no less prudent than he: "Weel, sir," she said, "you might die, it's true, but, then, you might not." The signet, by the way, to which the writers write, was historically the privy seal of the Scottish sovereigns and their original duties were connected with the documents normally authenticated by it. Until fairly recent times admission to their society resembled rather election to an exclusive club than the approach to a professional career. The qualifications, which were purely social, culminated in a dinner given to the officers of the society by the father of the

candidate, though perhaps it is something of an over-simplification to say that only two questions were asked him: "Who's your father?" and "When's the dinner?" All the various sorts of solicitors in Scotland (and there are at least five) retain their strong individuality despite the innovation of a Law Society to co-ordinate them. This society has just received a grant of arms from the Lord Lyon, a comprehensive composition incorporating the cross of St. Andrew, a sleeved arm, a couple of particularly gorgeous quill pens and a scrolled document adorned with a large red seal. The motto is adapted from Terence's "Heauton Timorumenos"—"*Humani nihil alienum.*"

THE ROYAL DESIGNATION

In the midst of all the trouble about the numeral in the new royal monogram it is interesting to recall that Her Majesty the Queen has conferred on the Faculty of Advocates in Edinburgh an honour which she has so far withheld from any of the Inns of Court, although, since the death of the late King and now of Queen Mary, both the Inner Temple and Lincoln's Inn are without royal Benchers. It was on 30th June last that a deputation from the Faculty waited on Her Majesty at the Palace of Holyroodhouse and presented to her the Roll of Honorary Members which she was graciously pleased to sign as Sovereign Honorary Member. King George VI had been the first Sovereign Honorary Member. Honorary admission to the Faculty is an exceedingly rare event and Lord Morton of Henryton was well pleased when he was invited to accept it. The controversy as to the validity of the designation "Elizabeth II" within the realm of Scotland has arisen from what obviously started as a bureaucratic blunder or oversight and has been aggravated by the difficulty always encountered of putting the bureaucratic machine into reverse. Anyhow, it is just as well that the English (whose historic sense is, if anything, under-developed) should realise that serious people in Scotland take this matter very seriously indeed, for it epitomises a whole volume of discontents and dissatisfactions which one might sum up by saying that they are sick of being pushed around by Whitehall. Well, aren't we all? But a strongly individualistic people, as different from the English as are the Irish, increasingly resent the violation of their national personality inherent in methods of mass legislation, and their defence mechanism is driving them to note and invoke all manner of alleged breaches of the treaty of 1707 made between the two Kingdoms as a basis for the union of their separate Parliaments. It would be melodramatic to pretend that crisis point has been reached, but it would be a useful mental exercise for somebody in Whitehall to avert all possibility of a future crisis by entering imaginatively into a point of view not his own but none the less actual for that. A test case has been commenced in the Court of Session to challenge the legality of the use of the designation "Elizabeth II," so while it is *sub judice* it would be improper to express an opinion on the legal question. On the mere point of policy, however, it seems fairly elementary that, in the absence of any compelling reason, it is better not to hurt other people's feelings if you can avoid it, particularly people who have long memories. A tramway worker in Edinburgh was recently asked by a casual passenger what he thought about this question. He expressed an attitude of judicious impartiality but added that he thought it was a pity the disputed designation was announced on the anniversary of the day that Elizabeth of England had murdered Mary Queen of Scots.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

"The Death Penalty and the Possibility of Mistake"

Sir,—I have read with interest the above article in your journal [*ante*, p. 243].

I would, however, like to state my information with reference to "Warner." I have no knowledge that Warner went to Belgium as stated.

I was at Charing Cross Hotel lounge. I left my overcoat for a short while there while I left the room. On my return my overcoat had gone. I reported this to the hotel manager.

Some time later a detective called on me and produced an overcoat which I identified as mine. He took my "precognition" which he stated would be forwarded to the Lord Advocate. I was informed that a person named "Warner" had confessed to stealing my overcoat at that hotel to enable him to set up an alibi to a charge of murdering a Miss Milne at a lonely house in Broughty Ferry and that he had been confined in Dundee gaol for some time.

Later I heard that as a result of my evidence the murder charge against Warner would not be continued. I reluctantly agreed at police request to prosecute Warner for larceny of my overcoat at Bow Street Magistrates' Court. I attended there when Warner pleaded "guilty" and was ordered to be deported to Toronto. I was told Warner had no overcoat and was asked to give mine to him. I readily assented as he had worn it (so I was informed) while tramping to Maidstone.

London, W.C.1. A. O. WARREN.

Re Nesbitt, deceased

Sir,—We read with interest your report in this week's edition of the SOLICITORS' JOURNAL (Volume 97, No. 15, at page 264). We feel that we should point out, however, that there is a mistake in the report as printed in the journal. In paragraph one the report states that both the Royal Victoria Infirmary and the Newcastle General Hospital were vested in the defendant board, i.e., in the Board of Governors of the United Newcastle upon Tyne Hospitals. In the report of the judgment of Roxburgh, J., in the next paragraph it is stated that the Board were entitled to both gifts.

The position is that only the Royal Victoria Infirmary is vested in the Board, the Newcastle General Hospital being administered by the Newcastle upon Tyne Hospital Management Committee which is, in turn, responsible to the Newcastle upon Tyne Regional Hospital Board. The direction of Roxburgh, J., as reported in the Weekly Law Reports (1 W.L.R. 595) was that the second legacy should be "payable to the Management Committee of that hospital (i.e., the Newcastle General Hospital) whatever is its appropriate designation," and not to the Board.

Newcastle upon Tyne. SAMUEL PHILLIPS & CO.

The New Schedule II: Time Expended

Sir,—In dealing with costs records to meet the requirements of the new Sched. II, your contributor writes (*ante*, p. 219): "In recording the copying done the typists will have to make their records in terms of hours and not of folios." That a solicitor's charges should bear some inverse relationship to the efficiency of his typists is rather startling, and I believe that the new schedule bears a different interpretation.

The view that "time expended by the solicitor" includes time expended by certain members of his staff is borne out by the guidance given in the March *Law Society's Gazette*, where it is stated (p. 101) that "time expended by partners should obviously be rated higher than, for example, time expended by unadmitted managing clerks . . ." It is submitted that "time expended by the solicitor" means time expended by the solicitor himself and by those to whom some of the responsible tasks of a solicitor are delegated, and that charges for copying work must still be related to the length of the documents copied. This is one of the "circumstances of the case" although not one particularised in the new schedule.

With great respect to your contributor I therefore suggest that the amount of copying work involved in a transaction is relevant, but subsidiary, to the seven circumstances mentioned in the schedule; and that it should continue to be assessed in terms of folios and not in terms of typists' time.

Diss. R. A. BURNE.

BOOKS RECEIVED

The Company Prospectus. A series of four lectures delivered to the London and District Society of Chartered Accountants. Reprinted from the *Accountant*. 1953. pp. 52. London: Gee and Company (Publishers), Ltd. 3s. 6d. net.

The Law of Libel and Slander. By OSWALD S. HICKSON and P. F. CARTER-RUCK. 1953. pp. xiii and (with Index) 290. London: Faber and Faber, Ltd. 30s. net.

Powers and Duties of a Liquidator in a Voluntary Winding Up. With Summaries of Procedure. By BRIAN A. W. HOLT, Solicitor. 1953. pp. x and (with Index) 142. London: Jordan & Sons, Ltd. 12s. 6d. net.

Oyez Practice Notes No. 33: Family Provision Practice. By SPENCER G. MAURICE, of Lincoln's Inn, Barrister-at-Law. 1953. pp. (with Index) 66. London: The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

The State of Matrimony. An investigation of the relationship between Ecclesiastical and Civil Marriage in England after the Reformation, with a consideration of the laws relating thereto. By REGINALD HAW, D.S.C., M.A., B.C.L., Vicar of Humberstone, Lincolnshire. 1953. pp. (with Index) 214. London: S.P.C.K. 21s. net.

The Conveyancer and Property Lawyer. Volume 16 (New Series). Editors: DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court. 1952. pp. xii and (with Index) 605. London: Sweet & Maxwell, Ltd. 45s. net.

The Magistrates' Courts Act, Rules and Forms. Annotated. By F. J. CHISLETT, B.Sc. Clerk to the County Justices, Wallington, Surrey. 1953. pp. xvi and (with Index) 270. London: Butterworth & Co. (Publishers), Ltd. 32s. 6d. net.

Gilbart Lectures on Banking. The Law relating to the Collection of Cheques by Bankers for their Customers. By LORD CHORLEY, M.A., Barrister-at-Law. Delivered under the auspices of the University of London King's College. 1953. pp. 56. London: Printed by Blades, East & Blades, Ltd. 2s. net.

The Stock Exchange Official Year-Book, 1953. In 2 vols. Editor-in-Chief: Sir HEWITT SKINNER, Bt. pp. (with Index) cl and 1635. London: Thomas Skinner & Co. (Publishers), Ltd. £7 net (2 vols.).

The Secretarial Practice of Local Authorities. By W. ERIC JACKSON, LL.B., Barrister-at-Law, Assistant Clerk of the London County Council. pp. x and (with Index) 258. Cambridge: W. Heffer & Sons, Ltd. 20s. net.

REVIEWS

Williams on the Law of Executors and Administrators. Thirteenth Edition. Two Volumes. By Sir DAVID HUGHES PARRY, M.A., LL.D., D.C.L., an Honorary Bencher of the Inner Temple, Professor of English Law, University of London, assisted by DONALD CHARLES POTTER, LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1953. London: Stevens & Sons, Ltd. £8 8s. net.

The preface explains that the greater part of this edition was in print when war broke out in 1939, but that the task of editing was resumed again after the war. The law is generally stated as at 1st August, 1952. Although publication did not take place until February, 1953, it was not possible to amend the text to take account of the Intestates' Estates Act, 1952; the Act is printed in an Appendix and a few footnotes refer to it. Unfortunately, the result is that a good deal of the text was out of date before publication. For instance, a brief but very good account of the Inheritance (Family Provision) Act, 1938, is contained in Chapter 14, but inevitably this does not refer to the important changes made by the 1952 Act. For these reference must be made to the copy of the Act in the Appendix or to the very short summary in the preface.

It is apparent that the publication of an authoritative work in two volumes containing 1,347 pages (including the index but excluding the tables) must be a lengthy process. As a new edition can be expected only once in every ten or fifteen years, it is most unfortunate that preparation of the present one had proceeded so far when the 1952 Act was passed, but neither the editor nor the publishers can be blamed.

Much of the text has been re-written, and its form greatly improved. The omission of irrelevant matter has enabled the length to be reduced, notwithstanding the incorporation of a good deal of new material. The edition has been carefully prepared and is well up to the standard of reliability established by earlier editions. It is suggested, however, that some further revision might be considered, particularly in order to avoid overlapping of various paragraphs. This occurs, for instance, between chapter 14, which explains the substantial provisions of the Inheritance (Family Provision) Act, 1938, and chapter 93, which deals with procedure, particularly in paras. 234 and 2033, and paras. 234A and 2029. A similar example of duplication (recognised in footnote 29 at p. 156) is to be found in the explanations of the doctrine of relation back at pp. 155 and 282. Further, the classification of the subject-matter does not appear to be altogether satisfactory. The discussion of the presumption of survivorship in the Law of Property Act, 1925, s. 184, does not seem very appropriate to a chapter entitled "Lapse of Legacies," as the section may be important for many other reasons. The table of statutes also appears to be in error, as it states that the section is dealt with at p. 61, which should apparently read "p. 644." Another example of doubtful classification is the statement of the rules regarding maintenance of infants at p. 809 and as to advancement of infants at p. 821, both in the chapter entitled "To whom legacies are to be paid." Maintenance and advancement can take place out of other benefits than legacies. One might also doubt whether the comparatively lengthy statement of the benefits granted to widows and others by the National Insurance Act, 1946, at p. 358 *et seq.*, is relevant. A rather more full explanation of such matters as the effect of the Rent Restrictions Acts would be of more practical value.

The work covers a very wide field. For instance, it contains a very adequate statement of the manner of obtaining probate, both in common form and solemn form, and of the persons to whom grants of administration will be made where death occurred before 1926 and after 1925, and also several useful chapters which explain the important rules for the construction of wills. The chapters on distribution on intestacy, unfortunately, could not be revised to take account of the amendments made by the Intestates' Estates Act, 1952, but they contain a full account of the pre-1926 rules. These examples are cited only as illustrations of the very wide scope of the book, which will undoubtedly remain the authoritative text-book on this subject for many years to come.

Palmer's Company Precedents. Sixteenth Edition. Part 3: Debentures. By His Honour the late A. F. TOPHAM, K.C., LL.M., Bencher of Lincoln's Inn, and R. BUCHANAN-DUNLOP, B.A., of the Middle Temple, Barrister-at-Law. 1952. London: Thomas Skinner & Co. (Publishers), Ltd. 30s. net.

A book with such a high reputation as this should not be open to severe criticism, but regrettably this is not the case. The work of bringing Pt. 3 up to date has not been done completely nor, so far as done, correctly in all respects. Possibly the unfortunate death of His Honour A. F. Topham explains this, although it cannot excuse it.

In places where rewriting was called for, additional words or sentences have been pushed in—in one case a complete

sentence has appeared in the middle of another. The stamp duty abolitions (letter of allotment, scrip certificate, etc.) in the Finance Act, 1949, have been overlooked. Chapter 25 (Prospectuses) is very poor and quite out of line with modern practice, as well as being full of terminological errors. These are a few of the criticisms which came to the reviewer's mind on going through the book.

There is a wealth of valuable precedents in the book and fortunately it is a book for the specialist, and he will be able to spot for himself any relevant inaccuracies. This is a book which the specialist will want; it is also a book which the specialist will want to be carefully overhauled before its next edition.

Hayward and Wright's Office of Magistrate. Ninth Edition. By JAMES WHITESIDE, Solicitor, Clerk to the Justices for the City and County of the City of Exeter. 1953. London: Butterworth & Co. (Publishers), Ltd.; Shaw and Sons, Ltd. 17s. 6d. net.

This book is designed essentially to meet the needs of lay magistrates and to provide a course of study easy to read and understand. The author has succeeded admirably in his task and in some 260 pages he accurately and lucidly covers the whole field of justices' duties in criminal, civil and licensing matters and out of court. This book will serve admirably as a text-book for lay magistrates and can also be read with profit by articled clerks and even by solicitors who are not too familiar with procedure before magistrates. It takes account of the changes to be made under the Magistrates' Courts Act, 1952. There is a forty-page index.

Mr. Whiteside states that he has been at pains to ensure that no point of law has been mentioned that will not stand the test of reference to authority. We have no doubt that this is so and we would take him up on only two matters and then not without diffidence. Firstly, he states that at the close of the prosecution's case the defendant may submit that there is no case to answer and that the informant may reply to such submission. Our experience has been that most courts allow the informant to reply only on a point of law. Secondly, he states that an affiliation order cannot be made against a boy under fourteen as there is an irrebuttable legal presumption that he cannot be the father. While it is clear law that such a boy cannot be convicted of rape or carnal knowledge, it is not so clear that this presumption has been extended beyond the bounds of the criminal law and we are not sure that the text-books on bastardy express Mr. Whiteside's view. The presumption is, indeed, now and then completely contradicted by the evidence and, until the point is finally decided by the High Court, it might be better that there should be no expression of opinion upon it.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

REVENUE: INCOME TAX: DISCONTINUANCE OF TRADE OF WAGON HIRING

North Central Wagon and Finance Co., Ltd. *v.* Fifield

Singleton, Jenkins and Hodson, L.JJ. 18th March, 1953

Appeal from Harman, J.

A finance company, whose trading activities included the letting out of wagons on hire and on hire purchase, appealed against the assessment for income tax purposes of the company's trading profits, on the ground that the assessment included profits derived from the simple hire of wagons which, the company alleged, was a trade or business separate or distinct from the the other trading activities of the company, and which, on the nationalisation of wagons under the Transport Act, 1947, had been discontinued within the period to which the assessment related. The General Commissioners confirmed the assessment. On appeal to the court, the company put forward the additional contention that s. 22 (2) of the Finance Act, 1936, required that the trade of letting wagons on hire must be assessed separately from the other activities of the company under Case VI of Sched. D to the Income Tax Act, 1918, whereas the profits of the other activities were assessable under Case I of Sched. D. Section 22 provides: "(1) No account shall be taken of the value of non-rateable machinery in ascertaining the value" of property under Sched. A and for certain purposes: "(2) The profits arising . . . from the letting of any machinery the value of which is not taken into account for the purpose of assessment to income tax under Sched. A shall be deemed to be profits chargeable to income tax under Case VI of Sched. D. (3) In this section—(*a*) the expression 'property' means land, tenements, hereditaments and heritages . . ." Harman, J., affirmed the decision of the General Commissioners. The company appealed.

JENKINS, L.J., said that the question whether there were two businesses or one business was one of fact; there were no facts inconsistent with the view that there was one business only, so that the first ground of appeal failed. In order to construe s. 22, it was proper to consider what the law was before the amendment made thereby. Hitherto, the annual value of land and hereditaments for income tax under Sched. A was based on a notional rent which a hypothetical tenant would be prepared to pay. For rating purposes the basis of valuation was the same, and fixed plant and machinery were taken into account for both purposes, until 1925, when the Rating and Valuation Act, and an order made thereunder, divided fixed plant and machinery into two classes, one of which was included in the valuation for rating and the other not. The discrepancy so produced between the Sched. A value and the rateable value occasioned much inconvenience, as the practice had been for the Sched. A assessments to follow the rateable value. It appeared, accordingly, that the intention underlying s. 22 was to assimilate the Sched. A method of valuation to the method used for rating purposes by excluding non-rateable machinery from the valuation, and to provide, consequentially, for the taxation under Case VI of Sched. D of profits arising from the letting of non-rateable machinery, which would no longer be included in the assessment under Sched. A. Read in that context, subs. (2) could not mean that the letting of machinery of all kinds, including loose chattels such as wagons, was a subject of assessment under Case VI and not Case I of Sched. D. The effect of such a construction would be revolutionary. Apart from that, the words in their natural meaning, with due regard to the context, would not bear such a construction. The appeal accordingly failed.

SINGLETON and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *C. King*, Q.C., *J. Senter* and *Barber* (*Drury, Hopgood & Co.*, for *Pashley & Hodgkinson*, Rotherham); *J. Millard Tucker*, Q.C., and *Sir R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 610**

RENT-RESTRICTED PREMISES: EFFECT OF CLOSING ORDER UNDER PUBLIC HEALTH (LONDON) ACT, 1936

Marela, Ltd. *v.* Machorowski

Denning, Morris and Romer, L.JJ. 23rd March, 1953

Appeal from Shoreditch County Court.

Premises which were protected by the Rent Acts were closed by an order of justices, made under Sched. V to the Public Health (London) Act, 1936, on the ground that they were unfit for habitation by reason of the leaking condition of the roof. The landlord then sought and obtained in the county court an order for possession on the ground that the premises were taken out of the Rent Acts by virtue of s. 156 (1) of the Housing Act, 1936, which provides: "nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933, shall prevent possession being obtained . . . (*e*) of any part of a building or underground room by any owner thereof in a case where a closing order is in force in respect thereof." The tenant appealed.

DENNING, L.J., said that para. (*e*) applied only to orders made under s. 12 of the Housing Act, which also referred to "part of a building or underground room." The present closing order was made in respect of the whole house under another Act. Under the London Act, a closing order was merely one of the ways of enforcing a nuisance order, to ensure that the necessary work was done, after which the order could be revoked. But a closing order under the Housing Act, 1936, was made by the local authority, and was the counterpart of a demolition order. The Rent Acts were not excluded, and the appeal should be allowed.

MORRIS and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *M. L. M. Chavasse* (*Neil Maclean & Co.*); *A. A. Spears* (*Sydney Nyman & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 831

HIGHWAY: CLOSING ORDER: EFFECT ON PRIVATE RIGHT OF WAY

Walsh *v.* Oates

Singleton, Denning and Romer, L.JJ. 24th March, 1953

Appeal from Halifax County Court.

The plaintiff was the owner of a house abutting on a road which had been closed by an order made by justices in 1943 under the Highway Act, 1835. He brought an action in which he alleged that he had a private right of way along the road under the Prescription Act, 1832, and at common law; and complained that the defendant was endangering that right of way by quarrying operations. On the action being remitted to the county court, the judge gave judgment for the defendant, without investigating the plaintiff's claim, on the ground that the closing order had extinguished any private right which the plaintiff might have had. The plaintiff appealed.

SINGLETON, L.J., said that *Wells* v. *London, Tilbury & Southend Railway Co.* (1877), 5 Ch. D. 126, and *Allen* v. *Ormond* (1806), 8 East 4, showed that public and private rights of way could exist independently over the same soil. The words of s. 91 of the Act of 1835 that "the proceedings thereupon shall be binding and conclusive on all persons whomsoever" affected merely public rights over a highway, and had no reference to any private right of way, and certain observations in *R.* v. *Wallace* (1879), 4 Q.B.D. 641, must be read as similarly limited. The action should accordingly go back for a re-hearing of the plaintiff's case on the merits.

DENNING and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *F. Whitworth* (*Clutton, Moore & Lavington*, for *Ralph C. Yablon & Temple-Milnes*, Bradford); *G. A. Rink* and *C. R. Dean* (*W. H. Boocock & Son*, Halifax).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 835

QUEEN'S BENCH DIVISION

CONTRACT: SALE OF GOODS BY TRADE DESCRIPTION: MUTUAL MISTAKE AS TO MEANING

Harrison and Jones, Ltd. *v.* Bunten and Lancaster, Ltd.

Pilcher, J. 19th March, 1953

Case stated by trade association appeals committee.

The appellants, who were manufacturers of articles made of kapok, by two written contracts bought from the respondents, who were importers of kapok and members of the Kapok Trade Association, a number of bales of a commodity described in the association's form of contract as "Calcutta Kapok, Sree Brand." That particular brand was known in the trade to contain an admixture of cotton, but that fact was not known at the time to either of the parties, who intended to deal in pure kapok which has no admixture of cotton. Samples were submitted, and goods in accordance with the brand of kapok described in the contracts were delivered by the sellers, and being found to be unsuitable for use in the buyers' machines by reason of the admixture of cotton were rejected by them. Arbitration proceedings followed, and an award was made by the umpire in favour of the sellers. The buyers appealed to the appeals committee of the Kapok Trade Association, who found as facts that Calcutta Kapok, Sree Brand, was known in the trade to contain an admixture of cotton; that they were not satisfied that the goods supplied did not correspond with the standard sample submitted by the sellers; and that the goods delivered answered the description of Calcutta Kapok, Sree Brand, specified in the contracts. They stated a consultative case in which they asked the opinion of the court on the questions, *inter alia*, whether the buyers were entitled to reject the goods delivered and whether they were entitled to recover damages.

PILCHER, J., said that it was contended for the buyers that as both parties had entered into the contracts under the impression that they were dealing in pure kapok, whereas in fact they were not, the contracts were nullities on the ground that there was a mutual mistake of fact on a fundamental point, with the result that there was no arbitration clause under which the parties could arbitrate their disputes, whether as to quality or otherwise. He thought that that view was unsound. The true view was that the sale was one by description of unascertained goods for future delivery with a provision that the buyers should be provided with samples. In each of the written contracts, the goods were described as Calcutta Kapok, Sree Brand, and that brand was known in the trade to contain an admixture of cotton. The goods supplied by the sellers answered the trade description, and the buyers did not satisfy the committee that the goods did not correspond to the samples supplied, and no question of misrepresentation or breach of warranty arose. In those circumstances, in his opinion, there was no ground for the suggestion that the buyers were entitled to reject the goods which in quality and composition corresponded accurately to the description by which they were known in the trade, merely because the buyers when entering into the contract, and the sellers, after the trouble arose, were under the impression that the goods bearing the particular trade description consisted of pure kapok. *Ryder* v. *Woodley* (1862), 10 W.R. 294, showed that a mistaken belief by buyers as to the nature and quality of goods bought by description was immaterial, provided that goods which answered the description were delivered, and it was not easy to see why the fact that the sellers also shared the mistaken belief should be material. After considering other authorities, Pilcher, J., said that in his opinion when goods, whether specific or unascertained, were sold under a known trade description without misrepresentation, innocent or guilty, and without breach of warranty, the fact that both parties were unaware that goods of that known description lacked any particular quality was completely irrelevant, the parties were bound by their contract, and there was no room for the doctrine that the contract could be treated as a nullity on the ground of mutual mistake, even though the mistake from the point of view of the purchaser might turn out to be of a fundamental character. In a case of that kind where the buyer mistakenly believed that goods of a known trade description had a particular composition he had no right to relief in the absence of misrepresentation or breach of warranty by the seller, and there was no good reason in principle why the fact that the seller might entertain the same unexpressed but erroneous belief should have any relevance when the rights of the parties came to be considered. He was, therefore, satisfied that the questions asked by the appeals committee should be answered in favour of the sellers. The result was that the buyers must pay the sellers' costs.

APPEARANCES: *A. W. Roskill*, Q.C., and *R. S. Nicklin* (*Pritchard, Englefield & Co.* for *Aneurin Rees & Davies*, Liverpool); *B. J. MacKenna*, Q.C., and *H. E. Park* (*Monro, Saw & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [2 W.L.R. 840

CONTRACT: ARBITRATION CLAUSE: ALLEGED FRUSTRATION: JURISDICTION OF ARBITRATOR

Kruse *v.* Questier and Co., Ltd.

Pilcher, J. 20th March, 1953

Preliminary point of law.

The plaintiff bought from the defendants 10,000 tons of Iraquian barley under the terms of a contract which provided for shipment of half the quantity between 15th September and 15th October, 1951, and of the remainder between 15th October and 15th November, 1951. The contract contained a term providing that should its fulfilment be rendered impossible by prohibition of export, the contract, or any unfulfilled part thereof, should be cancelled. It also contained an arbitration clause providing that all disputes arising from time to time under the contract should be submitted to arbitration. Owing to the condition of the rivers in Iraq in August, 1951, no barley could be shipped at the prescribed time and the time for shipment was extended by agreement between the parties to include the months of December, 1951, and January, 1952. In December, 1951, the Iraq government prohibited all exports of barley until March, 1952. The defendants alleged that the performance of the contract became impossible, and that at some time, not later than 31st August, 1951, the contract was frustrated. The

plaintiff began arbitration proceedings and arbitrators were appointed on behalf of the parties. They disagreed and an umpire made an award in the plaintiff's favour for £88,857 6s. 11d. The plaintiff brought an action on the award. By their defence the defendants pleaded that performance of the contract was rendered impossible and that the contract was frustrated not later than 31st August, 1951. They also pleaded that the contract was cancelled by the prohibition of export and that on one of the above pleas the submission to arbitration in the contract was nullified, with the result that the award was made without jurisdiction. They counter-claimed for a declaration to that effect. The issue arising on the pleadings was directed to be tried as a preliminary point of law.

PILCHER, J., said that the question he was asked to determine was whether in the event of the contract between the parties having been frustrated and/or varied and cancelled, the umpire's award was binding on the defendants. The point was one on which there was little, if any, direct authority. The plaintiff contended that until the contract was frustrated or cancelled it continued to exist, and with it the arbitration clause, and that one of the matters with which, under the form of the arbitration clause employed, the arbitrators and umpire were empowered to deal was whether, in the events which had occurred, the contract had been frustrated or cancelled. It was agreed that if a contract containing the present arbitration clause had been partly executed, that contention of the plaintiff would be correct, but it was said that there was no reported case dealing with the question whether the issue of frustration or cancellation was a proper one for an arbitrator to entertain under an arbitration clause when the contract was wholly unexecuted unless it could be held to have been so decided in *Hirji Mulji and Others* v. *Cheong Yue Steamship Co., Ltd.* [1926] A.C. 497. That case was decided by the Privy Council and it was there held by Lord Sumner that when a whole contract which was entirely unexecuted had gone as the result of frustration, the submission to arbitration had also gone, and that the arbitrator had no jurisdiction to make an award. In *Heyman and Another* v. *Darwins, Ltd.* [1942] A.C. 356 (a decision of the House of Lords on which the decision of the Privy Council was not binding) there were a number of statements by the noble lords, many of which were *obiter*, to the effect that in the case of an unexecuted contract, the question whether there has been frustration was one which arose under the contract within the meaning of an arbitration clause and was, therefore, a dispute which an arbitrator had jurisdiction to determine. He (Pilcher, J.) had no doubt whatsoever that, unassisted by the observations of the noble lords in *Heyman and Another* v. *Darwins, Ltd.* (*supra*), he should have held that where there was a contract containing an arbitration clause and the contract was treated by the parties as a subsisting contract until a dispute arose as to whether or not, some time after the contract was made, events had occurred which justified one party or the other in contending that the contract had become impossible of performance, and so frustrated, the point was essentially one which, in the absence of specific agreement between the parties, would come under a form of arbitration clause which provided that disputes under or arising out of the contract should be referred to arbitration. The observations in *Heyman and Another* v. *Darwins, Ltd.* (*supra*), also confirmed his own opinion that no distinction could properly be drawn in such circumstances between a case in which the contract was wholly executory and one in which it was partly executed. He therefore held that the award in the present case, so far as it related to frustration, was binding on the defendants. He was also of opinion that the question whether there was prohibition or not was one which was proper to be dealt with by the arbitrator and accordingly he gave judgment for the plaintiff on the claim and dismissed the counter-claim.

APPEARANCES: *J. F. Donaldson* (*Thomas Cooper & Co.*); *C. T. Bailhache* (*William A. Crump & Son*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[2 W.L.R. 850**

HUSBAND AND WIFE: MAINTENANCE: COMMITTAL ORDER

R. *v.* Governor of H.M. Bedford Prison and Others; *ex parte* Ames

Lord Goddard, C.J., Byrne and Parker, JJ. 30th March, 1953

Motion for order of *habeas corpus*.

The applicant, Herbert Dudley Doone Ames, was in default in making payments due to his wife under a maintenance order. In March, 1952, he was arrested and appeared before justices when he was examined as to his means. The arrears due were £103 4s. 6d., and the justices made an order committing him to prison for three months, but the order was suspended so long as he paid the amount of the order, namely, £1 a week, and 2s. 6d. off the arrears. After that date the applicant made payments amounting in all to £39 1s. 6d., but he then defaulted. On 11th February, 1953, the wife appeared before the justices and made an application for the release of the suspension of the committal order. The husband was not present. The justices issued a committal warrant, in which the sum named was £126 13s., which sum included the arrears due and the costs of the warrant. The husband was taken in execution and lodged in Bedford prison. He applied for an order of *habeas corpus* on the grounds that the issue of the warrant had been irregular, and contrary to s. 11 of the Money Payments (Justices Procedure) Act, 1935, as he had not been present before the justices when they issued the warrant.

LORD GODDARD, C.J., delivering the judgment of the court, said that the committal order had been made in the applicant's presence but suspended on conditions that he made the payments ordered, and the justices were entitled to issue the warrant in the absence of the applicant when he failed to comply with the terms of the order. As the sum named in the warrant as due from the applicant at the time of his arrest did not, however, take into account payments made by him since the order was made the warrant was invalid and the applicant must be discharged. Order of *habeas corpus*.

APPEARANCES: *T. H. K. Berry* (*Field, Roscoe & Co.* for *C. C. Bell & Son*, Bedford); *Barry Sheen* (*John T. Lewis & Woods* for *W. G. Christians & Sons*, Swansea); *R. J. Parker* (*Treasury Solicitor*); *Elwyn Jones* (*E. Rhodri Harris*, Swansea).

[Reported by R. P. COLINVAUX, Esq., Barrister-at-Law] **[1 W.L.R. 607**

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: EVIDENCE: JUDGES' RULES

R. *v.* Bass

Lord Goddard, C.J., Byrne and Parker, JJ. 30th March, 1953

Appeal against conviction.

The appellant was convicted upon indictment of shopbreaking and larceny. The only evidence against him was contained in statements amounting to a confession of guilt which he was alleged to have made, before he was charged, in the course of an interrogation by two police officers at a police station. At the trial it was submitted that the appellant had been in custody at the time when the interrogation took place, that he had not been cautioned, and that his statements had therefore been obtained in contravention of r. 3 of the Judges' Rules. It was also alleged that the statements had not been made voluntarily. The deputy chairman held that the statements had not been obtained improperly and were admissible. The two police officers who had interrogated the appellant gave evidence and read their accounts of the interview from their notebooks. As these accounts appeared to be identical, and the officers denied that they had been prepared in collaboration, counsel for the appellant asked that the jury should be allowed to inspect the notebooks, but his application was refused.

BYRNE, J., delivering the judgment of the court, said that the evidence established that when the appellant was questioned he was in custody and had not been cautioned, and the statements made by him had therefore been obtained in contravention of r. 3 of the Judges' Rules. Where the rules had not been complied with, however, statements might nevertheless be admitted in evidence provided that they had been made voluntarily (*R.* v. *Voisin* [1918] 1 K.B. 531; 13 Cr. App. R. 89; 34 T.L.R. 263). But in this case the deputy chairman omitted to tell the jury that unless they were satisfied that the statements had been made voluntarily they should reject them. As regarded the notebooks, the credibility and accuracy of the police officers was a vital matter, for it was upon their evidence alone that the case against the appellant rested. Therefore, the police officers having denied collaboration in the preparation of their notes, the jury should have been allowed to inspect the notebooks. Conviction quashed.

APPEARANCES: *F. Petre Crowder* (*Philip Conway, Thomas and Co.*); *Sir John Cameron* (*Solicitor for the Metropolitan Police*).

[Reported by R. P. COLINVAUX, Esq., Barrister-at-Law] **[2 W.L.R. 825**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Belper Urban District Council Bill [H.C.] [2nd April.
Tees Conservancy Superannuation Scheme Bill [H.C.] [2nd April.
Tynemouth Corporation Bill [H.C.] [2nd April.

Read Third Time :—

Glasgow Corporation Order Confirmation Bill [H.C.] [2nd April.
Post Office Bill [H.L.] [2nd April.

HOUSE OF COMMONS

QUESTION

MAGISTRATES' COURTS (CASES)

Asked what steps he was taking to relieve the pressure on Metropolitan magistrates by putting more work on to lay justices for the County of London, the HOME SECRETARY stated that he had made an order under s. 11 (*a*) of the Justices of the Peace Act, 1949, specifying the classes of case which might be taken by lay justices in the County of London. The order had come into effect on 1st April, and when fully implemented, it would substantially increase the work of Metropolitan lay justices. A further measure taken was that an arrangement had been made for justices to sit in a spare court-room at Bow Street to hear cases in relief of the Metropolitan magistrates. Thirdly, a domestic proceedings court, with a bench consisting of a Metropolitan magistrate and two lay justices selected from a panel, had been set up under s. 9 of the Summary Procedure (Domestic Proceedings) Act, 1937, and now had jurisdiction to take cases arising in any part of the Metropolitan court area or in the City of London. [2nd April.

STATUTORY INSTRUMENTS

Agricultural Lime (Amendment) Scheme, 1953. (S.I. 1953 No. 597.)
Airways Corporations (General Staff Pensions) (Amendment) Regulations, 1953. (S.I. 1953 No. 611.) 5d.
British Guiana (Constitution) Order in Council, 1953. (S.I. 1953 No. 586.) 1s. 5d.
Coal Mines Regulations (Suspension) Order, 1953. (S.I. 1953 No. 583.)
Colonial Civil Aviation (Application of Act) (Amendment) Order, 1953. (S.I. 1953 No. 591.)
Copper, Zinc, etc., Prices (Revocation) Order, 1953. (S.I. 1953 No. 604.)
Courts-Martial Appeal Court (Witnesses' Allowances, etc.) Regulations, 1953. (S.I. 1953 No. 574.)
East African Territories (Air Transport) (Amendment) Order in Council, 1953. (S.I. 1953 No. 590.) 5d.
Exchange of Securities Rules, 1953. (S.I. 1953 No. 557.) 5d.
Extradition (Gambia Colony) Order in Council, 1953. (S.I. 1953 No. 585.)
Flour (Amendment) Order, 1953. (S.I. 1953 No. 582.) 5d.
Importation of Plants from Belgium, France and the Netherlands (General Licence) Order, 1953. (S.I. 1953 No. 567.) 6d.
Importation of Plants from Belgium, France and the Netherlands (General Licence) (Scotland) Order, 1953. (S.I. 1953 No. 570 (S. 51).) 5d.
Importation of Plants (General Licence) Order, 1953. (S.I. 1953 No. 566.) 5d.
Importation of Plants (General Licence) (Scotland) Order, 1953. (S.I. 1953 No. 571 (S. 52).) 5d.
Inland Post Amendment (No. 9) Warrant 1953. (S.I. 1953 No. 537.) 5d.
Justices' Allowances (Scotland) Regulations, 1953. (S.I. 1953 No. 572 (S. 53).) 5d.
Juvenile Courts (London) Order, 1953. (S.I. 1953 No. 584 (L. 6).)
Labelling of Food Order, 1953. (S.I. 1953 No. 536.) 11d.
Lace Finishing Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 581.) 8d.
Linoleum (Maximum Prices) (Revocation) Order, 1953. (S.I. 1953 No. 600.)
Llangollen Urban District Water Order, 1953. (S.I. 1953 No. 605.)
Local Education Authorities (Recoupment) Regulations, 1953. (S.I. 1953 No. 507.) 5d.
Merchant Shipping Safety Convention (Hong Kong) No. 1 Order, 1953. (S.I. 1953 No. 592.) 11d.
Merchant Shipping Safety Convention (Hong Kong) No. 2 Order, 1953. (S.I. 1953 No. 593.)
National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment No. 2) Regulations, 1953. (S.I. 1953 No. 541 (S. 48).)
National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment No. 3) Regulations, 1953. (S.I. 1953 No. 542 (S. 49).) 8d.
Naval Courts-Martial (Procedure) Order, 1953. (S.I. 1953 No. 594.) 11d.
Retention of Cables and Pipes Under and Over Highways (Lincolnshire—Parts of Lindsey) (No. 2) Order, 1953. (S.I. 1953 No. 573.)
Ships' Stores (Charges) (Amendment No. 2) Order, 1953. (S.I. 1953 No. 579.)
Sierra Leone (Legislative Council) (Amendment) Order in Council, 1953. (S.I. 1953 No. 587.)
Sierra Leone Protectorate (Amendment) Order in Council, 1953. (S.I. 1953 No. 589.)
Sierra Leone (Public Service Commission) Order in Council, 1953. (S.I. 1953 No. 588.)
Sugar Industry (Provision for Research and Education in the Growing of Sugar Beet in Great Britain) Order, 1953. (S.I. 1953 No. 580.) 5d.
Superannuation (Justices' Clerks and Assistants) (County of Middlesex) Order, 1953. (S.I. 1953 No. 575.) 5d.
Superannuation (Justices' Clerks and Assistants) (County of Nottingham) Order, 1953. (S.I. 1953 No. 578.)
Superannuation (Justices' Clerks and Assistants) (Manchester) Order, 1953. (S.I. 1953 No. 577.) 6d.
Wages Regulation (Licensed Residential Establishment and Licensed Restaurant) (Amendment) Order, 1953. (S.I. 1953 No. 599.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

The annual general meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY was held in Chester on 23rd March, 1953. Fifty-four members attended and the meeting was addressed by Mr. I. D. Yeaman, a member of the Council of The Law Society. Mr. Cyril O. Jones, B.A., of Wrexham, was elected President for the forthcoming year and Mr. R. W. Hill, of Crewe, was elected Vice-President. The Hon. Treasurer and Hon. Secretary were re-elected. The meeting was followed by the annual dinner, at which seventy-five members and guests were present. The official guests included His Honour Judge Ernest Evans, Q.C.; Mr. N. G. H. Atkinson, District Registrar of Chester, Birkenhead and Runcorn; Messrs. F. H. Jessop and I. D. Yeaman, members of the Council of The Law Society, and Mr. J. G. Wigley, President of the Chester and North Wales Medical Society.

HARROGATE AND DISTRICT LAW SOCIETY held its first dinner for eighteen years at The Old Swan Hotel, Harrogate, on 18th March, and there was an attendance of eighty-nine members and their guests. The President, Mr. S. B. Kirby, T.D., presided, and the guests included the Hon. Mr. Justice Cassels; His Worship the Mayor of Harrogate (Councillor A. V. Milton); Mr. D. L. Bateson, C.B.E., M.C., President of The Law Society; His Honour William Stewart; His Honour Judge D. O. McKee; Mr. Ralph Cleworth, Q.C., and Mr. H. R. B. Shepherd, Q.C. The toasts were "Bench and Bar," proposed by Mr. S. B. Kirby, and responded to by the Hon. Mr. Justice Cassels and Mr. H. R. B. Shepherd, Q.C., "The Law Society," proposed by Mr. E. W. Fedden and responded to by Mr. D. L. Bateson, "Our Guests," proposed by Mr. F. E. Woods and responded to by Mr. W. A. B. Goss.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.

Will—Construction—Gift to *A* and at Her Death to *B*—Whether *A* has Life Interest

Q. In a home-made will on the normal printed type of will form that can be obtained from a stationer the testator made the following provision: "I give and bequeath unto my wife *X* all my property and furniture, and at the death of the above, all to go to my daughter." We are of the opinion that it would be implied that *X* is given a life interest with a residuary gift to the daughter. Furthermore, *X* died before the testator, so that to construe the will otherwise would result in an intestacy.

A. In Jarman on Wills, 7th ed., vol. II, p. 1167, it is stated: "For although a gift to *A* followed by a gift to *B* contingently on *A's* death, is, in the absence of any controlling context, construed as an absolute gift to *A* if he survives the testator, so that the gift to *B* only takes effect in the event of *A's* death in the lifetime of the testator, yet if the gift is to *A* and 'after' or 'on' or 'at' his death to *B*, the *prima facie* construction is that the testator intends to give a life interest to *A*, with remainder to *B*." Authorities cited include *Re Adams Trust* (1866), 14 W.R. 18, and *Re Ibbetson* (1903), 88 L.T. 461. On either of the above principles, the daughter will now take the estate of her father and, although it seems quite clear that a life interest in favour of *X* was intended, the construction has been greatly simplified by *X's* death in the testator's lifetime.

Housekeeping Allowance—Surplus Saved by Mistress in Charge of Household

Q. *A* has lived for the past thirty years with a woman who was married at the age of eighteen to a man who deserted her after a few days of marriage. They lived together as man and wife and even their children did not realise they were not in fact married. The woman died intestate, leaving some £400 in the Post Office Savings Bank. It is contended by *A* that this money was saved by the deceased out of housekeeping moneys allowed to her by him over the period during which they were living together. The deceased's husband has now appeared on the scene and states that he proposes to apply for administration to her estate and to claim the Post Office moneys. It seems clear that had *A* and the deceased been man and wife he might well have successfully upheld his claim to part of the Post Office moneys as having been saved out of housekeeping. Can he still do so in face of the lawful husband's undoubted rights under the Administration of Estates Act, 1925? Does the fact that they were not married in effect alter the position even though the deceased was quite clearly *A's* housekeeper?

A. There appears to be no authority as to the ownership of surplus moneys paid by a man to his mistress in respect of the housekeeping and maintenance of the joint home. The case of *Barrack* v. *M'Culloch* (1856), 3 K. & J. 110, which decided that the surplus of housekeeping moneys paid to a wife belonged to the husband, would appear to be based on the principle that where money is paid for a specific purpose which does not exhaust it, there is a resulting trust for the payer in respect of the balance. On this basis, the principle ought not to be confined to cases of husband and wife, and, as a mistress is, in law, a stranger, there is perhaps greater cogency of argument against any evidence of gift. In *Debenham* v. *Melton* (1880), 6 App. Cas. 24, at p. 36, it was held that where the person to whom the management of the household has been entrusted is a mistress or housekeeper a jury would be justified in drawing the inference (which is one of fact) that she had authority to pledge the householder's credit just as in the case of a wife, and we are not aware of any case where a distinction has been drawn between a wife and a mistress so far as concerns the pledging of the man's credit, at least so long as the consortium subsists. We are accordingly of the opinion that it makes no difference that the deceased was not married to *A*, who is, we think, entitled to the surplus saved from the housekeeping allowance.

Conveyance of Land to Infant—Disposition of Legal Estate

Q. *X* and *Y*, owners of Blackacre, on 29th July, 1947, conveyed the property for £500 to Miss *A*. On 30th July, 1947, Miss *A* conveyed Blackacre to *B* for £600. On 31st July, 1947, *B* mortgaged Blackacre to Miss *A* for £400. *B* has now agreed to sell Blackacre to *C* for £700. It has been ascertained, however, that Miss *A* did not attain the age of twenty-one years until 1948, and the legal estate is presumably outstanding in *X* and *Y*. What form of conveyance should be taken so as to convey the legal estate effectively to *C*? The mortgage will be paid off in the usual way immediately prior to the conveyance to *C*. Is there a precedent to which we can be referred?

A. We do not know of a precedent exactly in point but consider that it would be desirable first to convey the legal estate to *B* and for *B* to sell forward in the usual way. *X* and *Y* should execute a confirmatory conveyance in favour of *B* which should recite the facts, although we do not see any necessity for reference to the mortgage. Miss *A* will join in the conveyance to release *X* and *Y* from their agreement to create a settlement pursuant to s. 27 (1) of the Settled Land Act, 1925, and to give *B* the usual covenants for title. In our opinion, this course will be preferable to including these matters in the conveyance to *C* so that the mortgage may be repaid and any equitable estates got in before the conveyance to *C* and so enable *B* to sell and convey as beneficial owner.

Rent Restriction—Oral Agreement of Tenants to Improvements—Subsequent Objection—Increase of Rent

Q. Through the landlord's agent the tenants of three properties subject to the Rent Restrictions Acts were approached and verbally agreed to having bathrooms built at the respective premises. Estimates have been obtained and the tenants now object to the proposed alterations owing to the cost, which is £200. Is the landlord entitled to proceed with the proposed alterations in spite of the tenants' objections? If the alterations are carried out may any sum be added to the rent now payable in respect of such alterations?

A. The landlord is, in our opinion, entitled to proceed with the installation of the bathrooms by virtue of the permission given (it being understood that he is paying for the work) and can then give notices of increases of rent by the equivalent of 8 per cent. of the cost; but it would then be open to any tenant to apply to the county court for an order "suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole *or in part*, and the court may make an order accordingly." It would therefore be advisable to obtain competitive estimates. The tenant's application would be under the proviso to s. 2 (1) (*a*) of the Increase of Rent, etc., Restrictions Act, 1920, and he would fulfil the condition imposed by s. 7 (2) (*a*) of the Rent, etc., Restrictions (Amendment) Act, 1933, i.e., of not having given written consent; but that is merely a qualifying condition and does not, in our opinion, automatically entitle him to disallowance of all or part of the increase.

Estate Duty—House Purchased by Deceased in Daughter's Name—Daughter Living in House and Paying Rent to Deceased

Q. We act for the executors of the will of a deceased who in the year 1934 purchased a house in the name of her daughter, and it has been discovered in dealing with the income tax affairs that the property has always been treated as belonging to the deceased. Upon enquiry it appears that the daughter, who lives in the property, had until four years ago paid rent to the deceased but the deceased then went to live with her and the payments ceased. The question which now arises is that of estate duty.

A. But for the payment of rent the purchase by the deceased in the name of her daughter would have given rise to a presumption of advancement negativing the usual presumption of a resulting trust. The payment of rent is clear evidence to rebut the presumption of advancement and it follows therefore that the house was subject to a resulting trust in favour of the deceased; s. 53 of the Law of Property Act, 1925, does not, of course, affect the creation or operation of resulting trusts. Clearly the house has to be taken into account for estate duty purposes, for if any gift took place subsequent to the purchase the evidence shows that it must have been less than five years ago. In fact there appears to be no evidence of any subsequent gift, since the cessation of rent explains itself by the circumstances in which it arose.

NOTES AND NEWS

Honours and Appointments

Alderman A. F. CLARK, solicitor, of Reading, has been appointed to represent the Reading Corporation on the executive council for Reading under the National Health Service Act, to hold office until 31st March, 1956.

Mr. T. O. JONES, assistant solicitor to Batley Corporation, has been appointed to a similar post under Newcastle County Borough Council.

Mr. J. H. MITCHELL, formerly deputy clerk of the North London magistrates' court, was welcomed on 1st April as the first full-time magistrates' clerk to be appointed in Lincoln.

Mr. C. P. L. WHISHAW, solicitor, of Princes Street, London, E.C.2, has been appointed a member of the Kuwait Investment Board.

Personal Notes

Magistrates, solicitors and officers of Lincoln magistrates' court attended to say good-bye to Mr. J. E. M. Coleman on 1st April when he retired from the office of clerk to the court, and to thank him for years of devoted service to the administration of justice in the city. Mr. Coleman will continue to practise as a solicitor.

Mr. Harry Poole, clerk to the Newcastle-under-Lyme borough magistrates since 1919, is to retire on 1st May. He will continue his legal practice.

Mr. F. G. Scott, solicitor, Oxford, has retired after being clerk to the Oxfordshire County Council for twenty-five years. Presentations made to him on his retirement included a fishing rod, reel and tackle from the heads of departments and their deputies, a pair of binoculars from the remainder of the staff and employees, and a shooting stick from his own department.

Judge R. A. Willes, County Court Judge for Derbyshire, is to retire at the age of 72 on 20th April, the anniversary of his appointment twelve years ago. At Derby County Court on 9th April, when the retirement was announced, the President of the Derby Law Society, Mr. W. L. P. Woolley, spoke on behalf of the society, and Mr. N. R. Pinder, the senior practising solicitor, thanked Judge Willes on behalf of the Derby solicitors and barristers.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On the 26th March, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1951, that HORACE HENRY STRIDE of No. 63 Marmion Road, Southsea, be suspended from practice as a solicitor for a period of five (5) years from the date of the order and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 26th March, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of CECIL ARTHUR LLOYD, formerly of Hull, and now confined in H.M. Prison, Leyhill, Gloucester, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 26th March, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of JOSEPH JAMES GLEDHILL GREENWOOD, now confined in H.M. Prison, Wormwood Scrubs, London, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

THE LAW SOCIETY

SPECIAL PRIZES FOR THE YEAR 1952

THE SCOTT SCHOLARSHIP: A. L. Jones, B.A., LL.B. Cantab. THE BRODERIP PRIZE FOR REAL PROPERTY AND CONVEYANCING: D. G. Watson, M.A., LL.B. Cantab. THE CLABON PRIZE: H. H. Gwyther, LL.B. London. THE ROBERT INNES PRIZE: A. L. Jones, B.A., LL.B. Cantab. THE MAURICE NORDON PRIZE: J. O. Davies, M.A., LL.B. Cantab. THE LOCAL GOVERNMENT PRIZE: B. R. Thorpe, LL.B. London. THE JOHN MARSHALL PRIZE: P. W. Skinnard. THE GEOFFREY HOWARD-WATSON PRIZE: S. P. Hilton. THE JUSTICES' CLERKS' SOCIETY'S PRIZE: G. Macavoy. SAMUEL HERBERT EASTERBROOK PRIZE: W. D. Park. LOCAL PRIZES: THE BIRMINGHAM LAW SOCIETY'S BRONZE MEDAL: S. Cooper, LL.B. Birmingham. THE CITY OF LONDON SOLICITORS' COMPANY'S PRIZE: H. Dobin. THE CITY OF LONDON SOLICITORS' COMPANY'S GROTIUS PRIZE: J. E. Norton. THE SIR GEORGE FOWLER PRIZE: J. C. Hicks. THE NEWCASTLE-UPON-TYNE PRIZE: A. L. Jones, B.A., LL.B. Cantab. THE RENDER PRIZE: E. P. Mawson. THE ALFRED SYRETT PRIZE: C. F. Whitehorn.

DEVELOPMENT PLANS

COUNTY BOROUGH OF BRIGHTON DEVELOPMENT PLAN

The above development plan was on 30th March, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the County Borough of Brighton. A certified copy of the plan as submitted for approval has been deposited at the office of the Borough Engineer and Surveyor, 26–30 King's Road, Brighton 1, for public inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays inclusive and 9 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th June, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Borough Engineer and Surveyor, 26–30 King's Road, Brighton, 1, and will then be entitled to receive notice of the eventual approval of the plan.

COUNTY BOROUGH OF READING DEVELOPMENT PLAN

The above development plan was on 30th March, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to the County Borough of Reading. Certified copies of the plan as submitted for approval have been deposited for public inspection at the office of the Borough Surveyor, Town Hall, Reading. Such certified copies so deposited are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 9 a.m. and 5.30 p.m. on Mondays to Fridays inclusive and 8.30 a.m. and 12.30 p.m. on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before the 30th May, 1953, and any such objection or representation should state the grounds on which it was made.

COUNTY OF ESSEX DEVELOPMENT PLAN

The above development plan was on 31st March, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the administrative County of Essex and comprises land within all the county districts in the county. A certified copy of the plan as submitted for approval has been deposited for public inspection at the County Hall, Chelmsford. Certified extracts of the plan so far as it relates to the undermentioned areas have also been deposited for public inspection as follows:—

The whole County (County Map).—The Borough or District Council Offices for each county district in the County.

Aveley, Grays and Tilbury.—Council Offices, Whitehall Lane, Grays.

Benfleet.—Council Offices, Thundersley.

Billericay.—Surveyor's Office, 108 High Street, Billericay.

Braintree.—Town Hall, Braintree.

Brentwood, Shenfield and Hutton.—Council Offices, Ingrave Road, Brentwood.

Canvey Island.—Council Offices, Canvey Island.

Chelmsford.—Municipal Offices, Duke Street, Chelmsford. Council Offices, New London Road, Chelmsford.

Clacton-on-Sea.—Town Hall, Clacton-on-Sea. North-East Essex Area Planning Office, 15A High Street, Colchester.

Colchester.—Borough Engineer's Office, 1 West Stockwell Street, Colchester. North-East Essex Area Planning Office, 15A High Street, Colchester.

Epping.—Council Offices, 91 High Street, Epping.
Harwich.—Town Hall, Harwich. North-East Essex Area Planning Office, 15A High Street, Colchester. Council Offices, Weeley.
Rayleigh.—Council Offices, 28 High Street, Rayleigh.
Rochford.—Council Offices, Rochford.
Stanford-le-Hope and Corringham.—Council Offices, Whitehall Lane, Grays.
Waltham Abbey.—Town Hall, Waltham Abbey.
Wickford.—Surveyor's Office, 108 High Street, Billericay; Council Offices, New London Road, Chelmsford.
Witham.—Council Offices, Collingwood Road, Witham.
Metropolitan Essex.—Town Hall, Barking; Council Offices, Old Station Road, Loughton; Town Hall, Chingford; Civic Centre, Dagenham; Council Offices, Billet Lane, Hornchurch; Town Hall, Ilford; Town Hall, Leyton; Town Hall, Romford, Town Hall, Walthamstow; Municipal Offices, High Road; Woodford.

The copy and extracts of the plan so deposited are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9.30 a.m. and 5 p.m. on Mondays to Fridays inclusive and 9.30 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th May, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the County Council of Essex at the County Hall, Chelmsford, and will then be entitled to receive notice of the eventual approval of the plan.

Surrey County Council Development Plan

The above development plan was, on 27th March, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the Administrative County of Surrey and comprises land within the districts of the county district authorities referred to in the schedule hereto. A certified copy of the plan as submitted for approval has been deposited for public inspection at the County Hall, Kingston-upon-Thames.

Certified copies or extracts of the plan so far as they relate to the districts referred to in the schedule hereto have also been deposited for public inspection at the addresses set out against the names of the county district authorities in the said schedule and are available for inspection, free of charge, by all persons interested at the places mentioned above between 10 a.m. and 4 p.m. on Mondays to Fridays inclusive, and 10 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the plan may be sent, in writing, to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 18th July, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Surrey County Council at the County Hall, Kingston-upon-Thames, and will then be entitled to receive notice of the eventual approval of the plan. The plan is accompanied by a written statement and reports of the survey and analyses, and a series of maps. These are being placed on sale to the public and a price list of the various documents and plans comprising and accompanying the plan can be obtained on application to the Clerk of the Council, County Hall, Kingston-upon-Thames (ref. CGD).

The Schedule

County District Authority and Address for Inspection of Plan

Bagshot R.D.C.—Council Offices, Bagshot.
Banstead U.D.C.—Council House, Brighton Road, Banstead.
Barnes B.C.—Municipal Offices, Sheen Lane, East Sheen, S.W.14.
Beddington and Wallington B.C.—Town Hall, Wallington.
Carshalton U.D.C.—Council Offices, The Grove, Carshalton.
Caterham and Warlingham U.D.C.—Council Offices, Caterham.
Chertsey U.D.C.—Engineer and Surveyor's Office, Council Offices, Chertsey.
Coulsdon and Purley U.D.C.—Council Offices, Purley.
Dorking U.D.C.—Council Offices, Pippbrook, Dorking.
Dorking and Horley R.D.C.—(1) Council Offices, Brookmead, Dorking; (2) Engineer and Surveyor's Office, Russelldene, Horley.
Egham U.D.C.—Engineer and Surveyor's Office, Fire Station Buildings, High Street, Egham.
Epsom and Ewell B.C.—Town Hall, The Parade, Epsom.
Esher U.D.C.—Council Offices, Portsmouth Road, Esher.
Farnham U.D.C.—Council Offices, Farnham.
Frimley and Camberley U.D.C.—Municipal Buildings, Camberley.
Godalming B.C.—Municipal Buildings, Godalming.
Godstone R.D.C.—Council Offices, Oxted.
Guildford B.C.—Municipal Offices, Guildford.
Guildford R.D.C.—Millmead House, Millmead Lane, Guildford.
Hambledon R.D.C.—Council Offices, Buryfields, Guildford.
Haslemere U.D.C.—Council Offices, Haslemere.
Kingston B.C.—Guildhall, Kingston-upon-Thames.
Leatherhead U.D.C.—Council Offices, Leatherhead.
Malden and Coombe B.C.—Municipal Offices, New Malden.
Merton and Morden U.D.C.—Morden Hall, S.W.19.
Mitcham B.C.—Town Hall, Mitcham.
Reigate B.C.—Town Hall, Reigate.
Richmond B.C.—Town Hall, Richmond.
Surbiton B.C.—Council Offices, Surbiton.
Sutton and Cheam B.C.—Municipal Offices, Sutton.
Walton and Weybridge U.D.C.—Council Offices, Walton-on-Thames.
Wimbledon B.C.—Town Hall, Wimbledon.
Woking U.D.C.—Area Planning Officer's Office, Council Offices, Woking.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

The Directors of the Society have appointed Mr. F. J. Holroyde Managing Director. He was appointed Secretary in 1926 and became General Manager and Secretary in 1936. Mr. Cyril Mont, F.C.A., who became Assistant Secretary in 1947, has been appointed Secretary.

In a Preliminary Announcement dated 15th April, 1953, the Directors state that the profit for the year 1952, after providing £10,954 (*£64,421*) for taxation, amounted to £55,874 (*£95,413*), including an amount estimated at £6,500 (*nil*) arising from a change in the basis of stock valuation. A final dividend of 10 per cent. (*11 per cent.*), making 14 per cent. for the year on the increased capital of £200,000 (*against 19 per cent. on £150,000*) is recommended, absorbing £15,200 net (*£14,962*). The gross bonus payable to the staff amounts to £26,000 (*£35,000*). Cost of removal of the London Works, amounting to £8,895, has been debited to the Rebuilding Reserve. Rebuilding Reserve receives nil (*£10,000*), General Reserve £5,000 (*£7,500*), Taxation Equalisation Reserve £7,500 (*£12,500*) and Women's Pension Reserve £2,000 (*same*). Carry forward £39,675 (*£39,501*). Meeting: 19th May. Books closed: 6th to 19th May inclusive.

OBITUARY

Mr. H. BARFIELD

Mr. Harold Barfield, solicitor, of Banbury, has died at the age of 80. He was admitted in 1901 and had been in practice in the town for fifty years.

Mr. A. W. BURCHELL

Mr. Alfred William Burchell, solicitor, of Bishopsgate, has died at the age of 86. Admitted in 1899, he was the last of the founder members of the Nottage Institute, Wivenhoe, and was solicitor to the trustees.

Sir G. G. CRAIG

Sir Gilfred Gordon Craig, D.L., J.P., solicitor, of Lincoln's Inn, died suddenly on 5th April. He was admitted in 1895.

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